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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.623 OF 2007

Smt.Suvarna P. Mohite .. Appellant

V/s

B.M.C. .. Respondent

Shri Anil Singh with A.S.Pande for the Appellant
Mrs Geeta Jogalekar for BMC

CORAM:S.R.SATHE,J.
DATED:13th Sept. 2007

P.C.:-

1. Heard both the learned Advocates at length. Mater is heard finally at admission stage.

2. As the ad-interim relief prayed by the plaintiff in his Notice of Motion NO.2688 of 2007 restraining defendant Corporation from demolishing the suit room bearing No.9 described in detailed in the plaint, was rejected, the plaintiff has filed the present A.O..

3. It is the case of the plaintiff that for last several years the suit room is in existence and she is in occupation of the said room as a tenant of one Hemant A. Chaugule and she has executed an agreement in that behalf. She has even paid the taxes for the said premises and is having ration card, electricity bill on the address of the said premises. However, the Defendant Corporation issued notice dated 23-7-2007 and called upon her to remove the unauthorised structure i.e. suit room within 7 days from receipt of the letter. He therefore filed LC Suit No.208 of 2007 in the City Civil Court, Bombay and also filed above mentioned Notice of Motion and prayed for ad-interim reliefs.

4. The defendant Corporation contended that construction of the suit room was unauthorised. Not only that but the same was demolished by the Corporation after giving due notice to the plaintiff on 11-112-2002, 27-2-2003 and

22-5-2005. However, every time after demolition the plaintiff is again constructing the room unauthorizedly and illegally. It is the contention of the Corporation that when the plaintiff submitted an application to the Corporation seeking permission for repairs of room no.9 the Corporation noticed that unauthorised construction of room no. 9 was again carried out and hence the Corporation called upon the plaintiff to remove the unauthorised construction within 7 days and the said action of the Corporation is legal and correct.

5. Shri Anil Singh, learned Advocate for the plaintiff Appellant strenuously argued before me that when the structure is in existence, if it is the contention of the Corporation that the construction is unauthorised then Corporation has to follow necessary procedure under Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as MMC Act) and in particular under Section 351 of the said Act. The letter sent by the Corporation dated 23-7-2007 cannot be said to be a notice under Section 351 of the said Act and hence the learned trial Judge ought to have granted ad-interim relief as prayed.

6. As against this, Mrs.Joglekar, learned Advocate for BMC supported the order passed by the learned trial Judge and submitted that the letter dated 23-7-2007 can be continued as a notice though it is not specifically mentioned that it is notice under Section 351 of the said Act. Besides this, she submitted that when 3 times the Corporation had demolished the unauthorised construction of room no.9, the Corporation was in fact not expected to issue notice as alleged by the plaintiff. She also submitted that plaintiff has suppressed the material facts and as such the learned trial Judge has rightly refused ad-interim relief to the plaintiff.

7. Though the plaintiff has produced certain documents such as ration card, electoral roll the same are certainly not sufficient to show that the premises in question are in existence for several years. What is more to be noted is that it is not even the case of the plaintiff that at any point of time she had obtained permission for the construction of room no.9. So, when apparently it is clear that the suit room has been constructed without permission and the same is illegal the plaintiff is certainly not entitled to claim any equitable relief.

8. It must be noted that Assistant Engineer of the defendant Corporation has filed affidavit and has stated that the suit room was demolished previously on 3 occasions but every time plaintiff is again constructing a room at the said place unauthorizedly. It is pertinent to note that though the plaintiff has given long history of the litigation between her and the landlord as well as

the Corporation she has not at all disclosed the fact that previously room no.9 was demolished as alleged by the Corporation. Incidently, it must be noted that by letter dated 23-7-2007 the defendant Corporation has also in fact given 7 days time to the plaintiff to demolish the suit structure. Thus, it is very clear that the plaintiff has suppressed material fact and has not approached to the Court with clean hands. Naturally, plaintiff is certainly not entitled to get any equitable relief. The learned trial Judge was justified in rejecting the ad-interim relief. It cannot be said that discretion used by the learned trial Judge is not proper or legal.

9. It is needless to say that when the suit room in question was demolished by the Corporation previously on 3 occasions and the plaintiff has suppressed this material fact from the Court, granting any ad-interim relief in her favour would in fact amount to abuse of process of law. It would also amount to putting premium on such illegal act of a person who is not coming to the court with clean hands.

10. In this view of the matter, I have no hesitation to hold that there is no necessity to interfere with the order passed by the learned trial Judge. Hence the appeal is dismissed with costs.

(S.R.SATHE,J.)

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